

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TONY COLIDA,	:	
	:	
Plaintiff,	:	07 Civ. 8056 (KMW) (HBP)
	:	
-against-	:	<u>ORDER</u>
	:	
NOKIA, INC.,	:	
	:	
Defendant.	:	

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PITMAN, United States Magistrate Judge:

Defendant has moved to dismiss this action, arguing that the summons and complaint were not properly served and that the complaint fails to state a claim on which relief can be granted.

Given the nature of plaintiff's claim -- alleged infringement of three design patents -- and the obvious dissimilar physical appearance of the accused cellular telephone, the likelihood that plaintiff's claim would survive defendant's motion to dismiss for failure to state a claim is extremely slim.¹ Nevertheless, the established law in this Circuit re

¹Plaintiff has brought a number of actions asserting infringement of the same design patents asserted here. Plaintiff has lost all these cases, and there are now numerous opinions explaining the limited scope of the protection afforded by a design patent. E.g., Colida v. Nokia America Corp., 05 Civ. 9920 (KMW) (HBP) (S.D.N.Y. Feb. 16, 2007), appeal dismissed, Docket No 2007-1324 (Fed. Cir. July 19, 2007); Kyocera Wireless Co. v. President Elecs., Ltd., No. 06-1131, 2006 WL 1153583 (Fed. Cir. (continued...))

quires that I address the alleged deficiencies in service first, and, if those deficiencies are fatal, the action would have to be dismissed without prejudice and without a resolution of the merits. Arrowsmith v. United Press Int'l, 320 F.2d 219, 221 (2d Cir. 1963). Although advantageous to defendant in the short run, such a result would not prevent plaintiff from reasserting his claim, thereby multiplying the legal fees incurred by defendant and the burden on the court.

Without doubt, defendant has the right to press its objection to service. If that is defendant's choice, so be it. However, given all the facts and circumstances of this case, I have serious reservations about the practical benefits of pressing the objection.

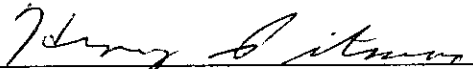
Accordingly, defendant is directed to reconsider whether it wants to press or withdraw its objections to the service of the summons and complaint. Defendant is directed to

¹(...continued)
 May 2, 2006); Colida v. Sharp Elecs. Corp., 125 Fed. Appx. 993 (Fed. Cir. 2005); Colida v. Qualcomm Inc., 128 Fed. Appx. 765 (Fed. Cir. 2005); Colida v. Sanyo N. Am. Corp., 118 Fed. Appx. 501 (Fed. Cir. 2004); Kyocera Wireless Corp. v. President Elecs., Ltd., 116 Fed. Appx. 282 (Fed. Cir. 2004); Colida v. Matsushita Elec. Corp. for Am., 114 Fed. Appx. 383 (Fed. Cir. 2004); Colida v. Ericsson, Inc., 93 Fed. Appx. 220 (Fed. Cir. 2004); Colida v. Sony Corp., 70 F.3d 130 (Fed. Cir. 1995). Despite this array of authorities, plaintiff continues to bring claims that are extremely similar to the claims that have been previously dismissed against designs that are obviously different from his patented designs.

advise me no later than March 24, 2008 whether it wishes to
continue to assert these objections.

Dated: New York, New York
March 12, 2008

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

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